



4/22/2013

Members of the Florida Senate,

We are writing to address Senator Latvala's amendment to SB 600 that restricts election assistance.¹ This amendment would create an unnecessary barrier to voting for Floridians who need assistance and could expose Florida to lawsuits under a number of provisions of the Voting Rights Act of 1965. It will also put additional pressures on election officials causing delays and confusion. This letter identifies the relevant legal provisions that the Senate should bear in mind and the effects the amendment may have upon future elections.

Florida's current law allows a voter to obtain assistance from two election officials or an assistor of their choice, so long as the assistor is not their employer or union representative.² This amendment would require the voter to know the assistor prior to Election Day, and would limit the number of voters that any individual can assist to 10 voters during any election.

Section 208

Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6, provides that: "[A]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union."³ When adopting Section 208, Congress recognized that "people requiring assistance in some jurisdictions are forced to choose between casting a ballot under the adverse circumstances of not being able to choose their own assistance or forfeiting their right to vote."⁴ Therefore, the committee "concluded that they must be permitted to have the assistance of a person of their own choice."⁵

Federal courts have found jurisdictions denying limited-English proficient voters the assistor of their choice in violation of Section 208 and the Department of Justice (DOJ) has filed a number of complaints against jurisdictions for violations.⁶ These cases typically have settled via consent orders that require the jurisdiction to take numerous steps to ensure that voters are able to receive assistance from assistors of their choice. In 2002, DOJ filed complaints against Orange, Miami-Dade and Osceola Counties alleging violations of Section 208 during the 2000 Presidential election.⁷ These cases resulted from failures to allow voters with limited-English proficiency to receive assistance

¹ See Amendment of SB 600 Barcode 891828 (Fla. 2013) available at <http://www.flsenate.gov/Session/Bill/2013/0600/Amendment/891828/HTML>.

² Fla. Stat. §§ 97.061, 101.051.

³ 42 U.S.C. § 1973aa-6.

⁴ S. Rep. No. 97-417 at 62 (1982).

⁵ *Id.*

⁶ See *United States v. Berks County*, 277 F. Supp.2d 570, 580 (E.D. Penn. 2003).

⁷ See Consent Decrees in *United States v. Orange County*, No. 6:02-cv-737-ORL-22JGG (S.D. Fla., Oct. 8, 2002); *United States v. Miami-Dade County*, No. 02-21698 (S.D. Fla., June 17, 2002); *United States v. Osceola County*, No. 6:02-CV-738-ORL-22JGG (M.D. Fla., July 22, 2002); all available at: http://www.justice.gov/crt/about/vot/litigation/recent_208.php.

from their assistor of choice. In Miami-Dade, the Department of Justice suit focused upon Creole-speaking Haitian-American voters who had been prevented from using assistors of their choice. The County permitted only poll workers to assist voters and most poll workers did not speak Creole. All three of these cases were resolved shortly after they were filed by consent orders signed by federal judges that required the jurisdictions to permit voters to choose their assistor of choice.

On its face, Senator Latvala's amendment is inconsistent with Section 208, because it would prevent voters from receiving "assistance by a person of the voter's choice." Individuals who are well-known within the community can be expected to receive requests for assistance from more than 10 voters in a given election. Furthermore, many voters needing assistance are most comfortable with, and would choose assistors from, groups and organizations that they trust, even if they do not already know the individual representative of the organization whom they ask for assistance. Because such organizational representatives often assist more than 10 voters per election period -- performing an important community service and gaining experience that makes them more knowledgeable, efficient and effective -- the numerical limitation in the proposed amendment would even further significantly narrow voters' range of choice among assistors.

Section 2

Section 2 of the Voting Rights Act, 42 U.S.C. 1973, prohibits "qualification[s] or prerequisite[s]" to voting or in any "standard, practice, or procedure" which "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color."⁸ Courts have found that Section 2 claims may be brought where election officials fail to provide or prevent language assistance from being provided to voters who require it.⁹ In *Berks County*, the court found a Section 2 violation based on the totality of the circumstances including "barriers to voters' ability to receive assistance from the person of their choice."

Section 5

With respect to the State's covered counties, the proposed amendment requires preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.¹⁰ In making a determination under Section 5, the State must demonstrate to the U.S. Attorney General or the District Court for the District of Columbia that the change "neither has the purpose nor effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group."¹¹ The Attorney General has objected to previous attempts to place limitations on assistance. For example, the Attorney General objected to a Bolivar County, Mississippi, provision that would have restricted those who could assist voters and would have required a poll official to observe assistance.¹² As explained in the previous sections, this amendment will significantly burden language minority voters and the burden is on the state to prove that it will not have a retrogressive effect.

⁸ 42 U.S.C. § 1973(a).

⁹ See *Berks County*, 277 F.Supp.2d at 580; *Hernandez v. Woodard*, 714 F. Supp. 963 (N.D. Ill. 1989),

¹⁰ 42 U.S.C. § 1973c.

¹¹ 28 C.F.R. § 51.55.

¹² See Attorney General Objection Letter to Mississippi, (April 16,1984), available at http://www.lawyerscommittee.org/admin/section_5/objections/files/1984_04_16_MS_83-2351.PDF .

Section 203

The amendment's restriction of the assistance that an "individual" may provide does not distinguish between election officials and others. If the provision is interpreted to apply to election officials, the law will conflict with Section 203 of the Voting Rights Act, 42 U.S.C. § 1973(a) and in the covered counties the parallel requirements of Section 4(f)(4) of the Voting Rights Act, 42 U.S.C. § 1973b(f)(4), which require election officials to provide Spanish language assistance to voters.¹³ As you no doubt are aware, oral assistance at the polls is a primary component of these provisions. Florida's current law provides that a voter can receive assistance from "two election officials or some other person of his or her own choosing..."¹⁴ The amendment limiting the number of voters an assistor may assist, however, states that: "[a]n individual may not provide assistance to more than 10 electors during any election." This separate sentence could be read to include election officials within the 10-electoral restriction as they are "individual[s]" and the restrictive language is not directly related or otherwise limited to "person[s] of his or her own choosing." If interpreted and applied in this way the proposed amendment would conflict with Section 203 and Section 4(f)(4). As mentioned above, in 2002, the Department of Justice brought suit against Orange County under Sections 203 and 208 for failure to provide for an adequate number of bilingual poll workers trained to assist Hispanic voters on Election day, and failure to ensure that poll officials allow Spanish-speaking voters their assistors of choice in casting their ballots.

Effects of the Proposed Amendment

Senator Latvala and others in support of the amendment have insinuated that these restrictions are necessary to prevent intimidation. However, there are already state law provisions in place to effectively prevent intimidation by assistors. The State's current law bars soliciting a voter in an effort to provide assistance to vote within 100 feet from the entrance of a polling place or early voting site.¹⁵ The State's current law also requires assistors to complete a declaration of assistance verifying they have not violated the solicitation provision, the violation of which is a first degree misdemeanor.¹⁶ Former Representative J.C. Planas, who originally suggested this amendment, discussed his experience trying to remove assistors from the polls in Miami-Dade during the 2012 elections.¹⁷ We received numerous reports to the national Election Protection hotline from voters who were told by misinformed poll workers and poll monitors, such as Mr. Planas, that they could not choose their assistor. The reports indicated that poll workers often lacked the language skills to effectively assist the voters, leaving the voters confused and disenfranchised.¹⁸ This is exactly what Congress was trying to prevent in adopting Section 208.

Assistors of choice relieve election officials from being the sole provider of assistance. Additionally, language minorities, including Florida's large Creole speaking population, are often unable to obtain assistance from election officials due to the lack of bilingual poll workers. Assistors of choice allow

¹³Florida is covered in its entirety by Section 203 with respect to Spanish language. 42 U.S.C. § 1973aa-1a(b)(2); 76 Fed. Reg. 63,602 (October 13, 2011)

¹⁴ Fla. Stat. 97.061.

¹⁵ Fla. Stat. § 101.051(2).

¹⁶ Fla. Stat. § 101.051(2).

¹⁷ See Video Recording of J.C. Planas' testimony during the Senate Community Affairs meeting on April 2nd, 2013, available at http://www.flsenate.gov/media/videoplayer.cfm?EventID=2443575804_2013041025 .

¹⁸ Reports are available to view at www.ourvotelive.org .

a voter to choose a person to assist them that they trust, and who has the skills necessary to provide the assistance they need.

We encourage you to consider the numerous problems discussed in this letter that the proposed amendment would present under the Voting Rights Act. We thank you for your consideration and are available to discuss any questions you may have. You may contact Dara Lindenbaum, an attorney at the Lawyers' Committee for Civil Rights Under Law at (202) 662-8324 or DLindenbaum@lawyerscommittee.org or Julie Ebenstein, a staff attorney at the American Civil Liberties Union of Florida at (786) 363-4434 or jebenstein@aclufl.org.

Sincerely,

Lawyers' Committee for Civil Rights Under Law

American Civil Liberties Union of Florida

Common Cause Florida

Rock the Vote

National Congress of Black Women